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No. 95-2058

# In the Supreme Court of the United States

OCTOBER TERM, 1995

CHRYSLER CORPORATION, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

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## QUESTION PRESENTED

Whether sheet metal components that are assembled and painted in Mexico are entitled to duty-free treatment, accorded United States components, pursuant to subheading 9802.00.80 of the Harmonized Tariff Schedule of the United States.

## TABLE OF CONTENTS


| | Page |
|---|---|
| Opinions below | 1 |
| Jurisdiction | 1 |
| Statement | 1 |
| Argument | 4 |
| Conclusion | 11 |


## TABLE OF AUTHORITIES

Cases:


| | |
|---|---|
| *Arkansas* v. *Oklahoma*, 503 U.S. 91 (1992) | 9 |
| *Caminetti* v. *United States*, 242 U.S. 470 (1917) | 4 |
| *Ehlert* v. *United States*, 402 U.S. 99 (1971) | 10 |
| *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185 (1976) | 9 |
| *General Motors Corp.* v. *United States*, 976 F.2d 716 (Fed. Cir. 1992) | 2, 3, 4, 9 |
| *Metropolitan Stevedore Co.* v. *Rambo*, 115 S. Ct. 2144 (1995) | 4 |
| *Moskal* v. *United States*, 498 U.S. 103 (1990) | 4 |
| *Pauley* v. *Bethenergy Mines, Inc.*, 501 U.S. 680 (1991) | 10 |
| *Reno* v. *Koray*, 115 S. Ct. 2021 (1995) | 6 |
| *Swan & Finch Co.* v. *United States*, 190 U.S. 143 (1903) | 7 |
| *United States* v. *Allen*, 163 U.S. 499 (1896) | 7 |
| *United States* v. *Brown*, 333 U.S. 18 (1948) | 6 |
| *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235 (1989) | 4 |


Statutes and regulations:


| | |
|---|---|
| North American Free Trade Agreement, 19 U.S.C. 3301-3473 | 10 |
| 19 U.S.C. 3332(c) | 10 |

Statutes and regulations—Continued: Page

19 C.F.R.:
Section 10.16 ..... 3
Section 10.16(b)(3) ..... 9
Section 10.16(c) ..... 3

Miscellaneous:

United States International Trade Comm'n, Harmonized Tariff Schedule of the United States (1996) ..... *passim*
H.R. Rep. No. 342, 89th Cong., 1st Sess. (1965) ..... 9
S. Rep. No. 530, 89th Cong., 1st Sess. (1965) ..... 7
Tariff Classification Study: Proposed Revised Tariff Schedules of the United States (Nov. 15, 1960) ..... 7
*Webster's Third New International Dictionary* (1986) ..... 5

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-6) is unpublished, but the decision is noted at 86 F.3d 1173 (Table). The opinion of the United States Court of International Trade (Pet App. 7-15) is unreported.

### JURISDICTION

The judgment of the court of appeals was entered on March 22, 1996. The petition for a writ of certiorari was filed on June 19, 1996. . The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

### STATEMENT

1. This petition involves the partial denial of duty-free treatment for certain components of automobiles

imported from Mexico. Sheet metal components were shipped to Mexico, with other components, for use in the manufacture of petitioner's vehicles. Once in Mexico, the sheet metal components were assembled into a vehicle body and were extensively painted; those operations resulted in a finished painted body ready for assembly. Pet. App. 8-9. Although the sheet metal components originally were manufactured in the United States, the United States Customs Service (Service) determined that their value should be included in the dutiable value of the completed vehicles, because the painting operations conducted in Mexico were too significant to be considered merely "incidental to * * * assembly" under heading 9802.00.80 (hereinafter heading 9802) of the Harmonized Tariff Schedule of the United States (HTSUS). Pet. App. 2, 8-9.

2. Petitioner challenged the Service's determination by bringing suit in the United States Court of International Trade. The court noted that, under *General Motors Corp.* v. *United States*, 976 F.2d 716 (Fed. Cir. 1992), the central issue "is whether the painting process as a whole is of a 'minor nature.'" Pet. App. 10 (quoting *General Motors*, 976 F.2d at 720). Based on evidence showing that the cost of the Mexican painting process and the capital investment in that process were substantial and extensive when compared to the cost of the original sheet metal components, the cost of their assembly, and the capital investment for that assembly, the Court of International Trade found that petitioner's painting operations were not "minor," and thus did not meet the statutory requirement that they be "incidental to the assembly process." Pet. App. 3, 10-11. The Court of International Trade also held that the regulations

that implement the statutory provisions of HTSUS, particularly 19 C.F.R. 10.16, must be construed in light of the limitations imposed by the statute, and therefore cannot be invoked to shield from duty improvements that are not "minor" under *General Motors*. Pet. App. 11-12.

3. The court of appeals affirmed. Pet. App. 1-6. The court agreed with the trial court's view that *General Motors* foreclosed petitioner's contention that all painting operations must be deemed "incidental to the assembly process." The court explained that *General Motors* made clear that "the statute's reference to 'painting' is simply an exemplar of an operation which is potentially 'incidental to the assembly process,' not a definitive statement that all painting operations, no matter how extensive, are allowed under" HTSUS. Pet. App. 4-5 (quoting *General Motors*, 976 F.2d at 719). The court of appeals also rejected petitioner's reliance on 19 C.F.R. 10.16, noting that the regulation "must be read in light of *General Motors*." Pet. App. 5. The court noted that, in any event, petitioner's argument was foreclosed by the plain language of the regulation, which "provides that any *significant* process * * * shall not be regarded as incidental to the assembly and shall preclude the application of the exemption." *Ibid.* (quoting 19 C.F.R. 10.16(c)). Because petitioner did not "persuade[] [the court] that its painting operations were not significant or that they were not primarily intended to enhance the appearance of or to impart distinctive characteristics to the sheet metal parts," Pet. App. 5-6, the court affirmed the denial of duty-free status for the sheet metal parts.

## ARGUMENT

The unpublished decision below, which is the only appellate decision besides *General Motors* to address the question presented in the 30 years since the pertinent statutory language was enacted, is correct. Moreover, the question presented lacks continuing significance for those in petitioner's position, because American car manufacturers operating in Mexico may now enjoy duty-free treatment to the extent that they comply with the North American-content requirements of the North American Free Trade Agreement. Accordingly, further review is not warranted.

1. In determining the meaning of a statute, the inquiry must begin with the "ordinary meaning" of the language chosen by Congress. See, *e.g.*, *Moskal* v. *United States*, 498 U.S. 103, 108-109 (1990). The language of HTSUS is dispositive in this case, "for where, as here, the statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *United States* v. *Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989), quoting *Caminetti* v. *United States*, 242 U.S. 470, 485 (1917); accord *Metropolitan Stevedore Co.* v. *Rambo*, 115 S. Ct. 2144, 2147 (1995).[1]

Under subsection 9802(c) of HTSUS, petitioner may qualify for the exemption it seeks *only* if its

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[1] We recognize that the pertinent statutory language may present considerable scope for interpretation with respect to applications not at issue in this case. Indeed, the Service has adopted regulations to assist with such applications (see pages 9-10, *infra*). Our point is that petitioner's contention in this case plainly exceeds the limits of interpretation permitted by the controlling statutory text.

sheet metal components "have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating and painting." HTSUS subheading 9802.00.80(c). Contrary to petitioner's contention, that provision does not "define[] painting as an operation that is incidental to assembly." Pet. 7. The statutory language instead requires the proponent of the exemption to establish that the goods "have not been advanced in value or improved in condition abroad" other than as result of "assembly" and steps "incidental" to that assembly. As used in that sentence, the ordinary meaning of the term "incidental" is "subordinate, nonessential * * * occurring as a minor concomitant" or "being likely to ensue as a chance or minor consequence." *Webster's Third New International Dictionary* (1986).

Petitioner is wrong to contend (Pet. 9) that the statute's use of the phrase "cleaning, lubricating and painting" can only be understood as prescribing that those processes *always* meet the statutory criterion of being "incidental to the assembly process." Because the reference to those processes is introduced with the phrase "such as," the reference most naturally denotes Congress's intent to cite those processes as examples of matters that can be "incidental." Indeed, "cleaning" and "lubricating" are inherently minor operations, and the use of the term "painting" in conjunction with those processes clearly demonstrates that the legislative mind was directed toward activities of the type listed only insofar as they are minor adjuncts "to the assembly process." There was no intent to have the listed examples become the tail that wagged the proverbial

dog—and to enable manufacturers to secure duty exemptions by "assembl[ing]" goods only as a minor or incidental aspect of complex painting processes that add vastly more value to the goods than the assembly itself.[2]

The same conclusion is suggested by the need to avoid the absurd consequences that would result from petitioner's interpretation of HTSUS. Compare *United States* v. *Brown*, 333 U.S. 18, 27 (1948). Under petitioner's interpretation, the painting of a work of art abroad prior to its assembly into a framed painting, would be considered "incidental to assembly" of the frame and the canvas backing. No argument advanced by petitioner requires such an anomalous doctrine, especially given that petitioner must shoulder a heavy burden of justification in seeking to establish its entitlement to an exemption from duty. "Such

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[2] Our interpretation does not, as petitioner contends, fail to give effect to every word in the statute. See Pet. 8-9. It instead recognizes that a permissible meaning of the phrase "such as" is "for example," and that the context in which that phrase appears, which the lower courts were bound to consider, see *Reno* v. *Koray*, 115 S. Ct. 2021, 2025 (1995), rules out the possibility that Congress intended any different meaning. Indeed, under petitioner's theory, if a statute provided for the extermination of "all rabid animals such as dogs and raccoons" the statute would require the killing of all dogs and raccoons irrespective of whether they were in fact rabid. Nor is petitioner correct in asserting that, by requiring that painting processes be "minor," the court of appeals created a "highly subjective" requirement out of whole cloth (Pet. 9), or that it has opened the door to "additional and possibly unknown conditions" (Pet. 10). As we have explained, the court's view is fully supported by the ordinary meaning of the word "incidental," which is the central criterion in the pertinent statutory language.

a claim is within the general principle that exemptions must be strictly construed, and that doubt must be resolved against the one asserting the exemption." *United States* v. *Allen*, 163 U.S. 499, 504 (1896); see also *Swan & Finch Co.* v. *United States*, 190 U.S. 143, 146 (1903).

2. Because the language of HTSUS, read in context, answers the question presented by this case, there is no need to consult the legislative history for further guidance. In any event, the legislative history supports the interpretation of the statute adopted by the court below.

Citing the Senate Committee Report that accompanied the 1965 amendments to the statute, petitioner argues that Congress included the reference to painting to "enlarge" the scope of the statutory duty exemption. See Pet. 9 (citing S. Rep. No. 530, 89th Cong., 1st Sess. 34 (1965)). An examination of that report, however, discloses that petitioner has misconstrued the import of that remark. Before the 1965 amendment, the statute provided:

> Articles assembled abroad in whole or in part of products of the United States which were exported for such purpose and which have not been advanced in value or improved in condition abroad by *any means other than by the act of assembly*.

See Tariff Classification Study: Proposed Revised Tariff Schedules of the United States 660 (Nov. 15, 1960). Thus, the only articles entitled to duty-free treatment were articles advanced in value or improved in condition solely by the assembly itself; value added by other steps that were the minor concomitants of assembly did not qualify for duty-free treatment. The 1965 amendments broadened the

statute to permit operations incidental to the assembly process, within the guidelines Congress intended for that term, *i.e.*, minor operations that occur during assembly.

That point is made clear by the House Report that accompanied the 1965 legislation:

> It appears that under the [then current statutory] language * * * *minor operations* such as painting *incidental to assembly abroad* may be precluded, and that in certain respects the [statute] is ambiguous, with the result that it imposes undue administrative burdens on customs officers.
>
> * * * * *
>
> The amended [statute] would specifically permit the U.S. component to be advanced or improved "by operations incidental to the assembly process such as cleaning, lubricating, and painting." It is common practice in assembling mechanical components to perform certain incidental operations which cannot always be provided for in advance. For example, in fitting the parts of a machine together, it may be necessary to remove rust; to remove grease, paint, or other preservative coatings; to file off or otherwise remove small amounts of excess material; to add lubricants; or to paint or apply other preservative coatings. It may also be necessary to test and adjust the components. Such operations, *if of a minor nature incidental to the assembly process*, whether done before, during, or after assembly, would be permitted even though they result in an advance

> in value of the U.S. components in the article assembled abroad.

H.R. Rep. No. 342, 89th Cong., 1st Sess. 48-49 (1965). That passage clearly confirms what the statutory language itself makes clear: that Congress intended the exemption to encompass the minor incidents of assembly, including painting, that did not themselves amount to assembly. It did not intend to allow duty-free treatment for economic value that is predominantly created by complex processes that are not themselves "assembly" or mere incidents of "assembly."

3. There is no greater merit to petitioner's argument (Pet. 13-14) that the court of appeals' interpretation conflicts with the regulations that the Service has promulgated to implement HTSUS. The courts below correctly recognized that a regulation must be consistent with the statute it implements. Any judicial interpretation of a regulation must therefore accord with the limitations reflected in the organic statute. Compare *Arkansas* v. *Oklahoma*, 503 U.S. 91, 105-108 (1992); *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 213-214 (1976). For that reason, petitioner is wrong to fault the courts below for interpreting the Service's regulations in light of the correct construction of the statute that the court of appeals had adopted in *General Motors*.

In any event, the Service's regulations demonstrate that petitioner is wrong to contend that the "plain meaning" (Pet. 13) of those regulations supports petitioner's case. The regulation on which petitioner relies, 19 C.F.R. 10.16(b)(3), makes clear that the "application of * * * paint" is offered merely as an "example[] of operations which are incidental to the

assembly process," and does not support petitioner's contention that *all* painting therefore qualifies as "incidental." Moreover, as the court of appeals noted (Pet. App. 5), a different subsection of the same regulation (not cited in the petition) categorically excludes from duty-free treatment "[a]ny significant process, operation, or treatment * * * whose primary purpose is the * * * physical or chemical improvement of a component" and "[p]ainting primarily intended to enhance the appearance of an article or to impart distinctive features or characteristics." 19 C.F.R. 10.16(c). Those provisions clearly exclude significant preservative painting from the scope of the term "incidental to the assembly process." No argument advanced by petitioner casts doubt on the court of appeals' reasoning on that point.[3]

4. In the thirty years that subheading 9802 and its predecessor have been in effect, the courts have considered the painting issue presented by this case in only two cases—this case and *General Motors*. Moreover, the duty-free treatment for Mexican operations, such as petitioner's, will be affected prospectively by the enactment of legislation implementing the North American Free Trade Agreement (NAFTA), 19 U.S.C. 3301-3473. Under 19 U.S.C. 3332(c) and the HTSUS, if the NAFTA content requirements are met, passenger vehicles may be

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[3] While the regulations clearly foreclose petitioner's argument, we note that under settled principles of administrative law any ambiguity in those regulations must be resolved in favor of the Service's "plausible construction" (*Ehlert* v. *United States*, 402 U.S. 99, 105 (1971)) even if that construction is not "the best or most natural one by grammatical or other standards." *Pauley* v. *Bethenergy Mines, Inc.*, 501 U.S. 680, 702 (1991).

brought into the United States duty free. Accordingly, the issue presented by petitioner's Mexican operations may lack any continuing practical significance.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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